

## STATE OF VERMONT

## HUMAN SERVICES BOARD

In re ) Fair Hearing No. 13,048

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Appeal of )

)

INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare denying his application for emergency assistance (EA) and general assistance (GA) for temporary housing. The issue is whether the petitioner meets the eligibility criteria under the regulations for either of these programs.

FINDINGS OF FACT

The facts are not in dispute, and are taken from the representations made by the petitioner and the Department at the petitioner's hearing held on September 12, 1994. The petitioner lives with his three children and an unrelated adult woman. One of the petitioner's children has cerebral palsy. The petitioner and his disabled child each receive SSI of \$500.87 a month. The petitioner's other two children receive ANFC of \$513.00 a month. The woman who lives with the petitioner receives an "essential person" grant of \$249.00 a month to care for the petitioner's disabled child. This yields a household income of about \$1,762.00 a month, plus food stamps of \$250.00.

At the end of June, 1994, the petitioner voluntarily vacated the apartment he was living in and moved his family into a motel. The petitioner stated that he left his apartment because it was becoming too expensive and he didn't want the "black mark" of being evicted if he couldn't pay the rent. The motel the petitioner moved into, however, cost at least twice as much as the apartment.

At about this same time the petitioner purchased a used car for \$400.00. The petitioner claims that since buying the car he has incurred \$1,200.00 in repairs.

On August 18, 1994, the petitioner applied for EA to move into a new apartment. The Department denied this application because the petitioner had received EA within the calendar year (see infra) and because the petitioner had not demonstrated an "emergency need" for housing that his income was not sufficient to meet.

The petitioner immediately requested that an appeal hearing be "expedited", which under the Department's procedures means that the board "will schedule a hearing as soon as possible, usually within 10 days".<sup>(1)</sup> On the day the District Director (again, pursuant to policy) phoned the petitioner's appeal into the board (August 19, 1994) the hearing officer was on vacation. The clerk of the board set the matter for hearing on the next available day on the hearing officer's calendar--September 12th. When the hearing officer returned from vacation (on August 29th) he did not attempt to schedule the matter sooner based on the District Office's representation that the petitioner was currently residing in the motel and that as of September 1, 1994, the petitioner would receive income of at least \$1,500.00.

On September 1, 1994, the petitioner received various scheduled benefits of about \$1,500.00. On that date, however, he and his family moved out of the motel and into a private homeless shelter in a town about 50 miles away. Rather than use his income to try to rent a permanent place to live, or remain in his present (or move to another) temporary housing situation, the petitioner states that he moved to the shelter after paying \$487.00 for his outstanding bill at the motel and paying \$600.00 he owed to a "friend" who had previously fixed his car.<sup>(2)</sup> The remainder was spent on school supplies and other household needs. The petitioner did not reapply for EA/GA, however, or inform either the board or the Department of his change in circumstances during the pendency of this appeal.

At his hearing on September 12th the petitioner stated he was without cash on hand and that he had to be out of the shelter by September 25, 1994. The petitioner requests assistance for temporary housing (back to a motel) until October 1, 1994, when he would use the family's monthly benefits payable on that date to move into a permanent apartment. The petitioner stated that his children were attending school "temporarily" in the town where the shelter is located, but that he intends to move the family back to the town of his previous residence.

The Department represented that as an alternative to staying in a motel the petitioner's handicapped daughter could stay temporarily at the Vermont Achievement Center, where she has stayed in the past and which is located in the petitioner's home town. The petitioner rejects this option because he says the child gets "homesick" when she stays there.<sup>(3)</sup> The petitioner also rejects the Department's suggestion that he stay temporarily in a local men's shelter and that his children and woman friend stay at a separate local women's and children's shelter because of negative past experiences the petitioner feels he has had with both of those facilities. There is no indication, however, that either of the latter two facilities would reject the petitioner and his family, or that any of the above facilities is actually unsuitable as a temporary shelter, given the family's circumstances.

### ORDER

The Department's decision is affirmed.

### REASONS

This case actually involves two decisions--the Department's denial of EA/GA on August 18th, and whether as of the date of the hearing (September 12th) the petitioner qualified for EA or GA. Under the regulations, EA benefits (which allow for a more generous and creative response by the Department to situations of homelessness than under the GA program) are payable only under the following conditions:

Emergency assistance may be authorized during one period of 30 consecutive days in any 12

consecutive month period. The 12 consecutive month period begins on the first of the month of application, regardless of the actual day within the month when the application initiates the 30 consecutive days, and ends at the end of the month preceding this month one year later. Thus, when the 30 consecutive days include parts of two calendar months, the household remains ineligible for ten calendar months thereafter.

W.A.M. § 2800 A.

In this case the Department's records show that the petitioner received EA benefits for two weeks of temporary housing in February, 1994. The petitioner argues that he is eligible for another "two weeks worth" of benefits; but the above regulation clearly limits eligibility for EA to one consecutive 30 day period per year--not a total of 30 days worth of benefits payable anytime within a calendar year. Under the above regulation the petitioner cannot qualify for EA benefits again until February, 1995, at the earliest. Thus, the issue is whether the petitioner qualified for GA on either August 18 or September 12, 1994.

The first decision (August 18th) can be disposed of summarily. GA is payable only when there exist "emergency needs (that) cannot be met under any other Department program". W.A.M. § 2600 A. On that date the petitioner was living in a motel he had voluntarily given up his apartment to move into. There is no indication that at that time the petitioner faced eviction prior to September 1, 1994, the date on which his family would receive over \$1,500.00 in monthly benefits, which could reasonably have been presumed to have been available and sufficient to allow the petitioner to obtain permanent housing. Therefore, the Department's decision that the petitioner did not have an "emergency need" for housing at that time must be affirmed.

The petitioner's "emergency need" status on September 12, 1994, is more problematic. The regulations also stipulate, however, that GA for households with income in excess of the ANFC payment standard (the petitioner's family has monthly income well in excess of this standard) is only payable when the family is facing a "catastrophic situation", which the regulations specifically define as a "court ordered or constructive eviction due to circumstances over which the applicant has no control". W.A.M. §§ 2600 C and 2602(b).

In this case, were it not for a serious question as to the petitioner's competence, it would be easy to dismiss the petitioner's plight--and, unfortunately, that of his

family--as one entirely of the petitioner's own making. The lack of judgement shown by the petitioner in voluntarily giving up his apartment in July to move into a much-more-expensive motel, and then in spending over \$1,000.00 available to him on September 1st to simply settle accounts that appear to have lacked any urgency rather than to avoid his family's homelessness is simply inexplicable.

Over the past few years the hearing officer has been led to suspect that the Department has applied (or finessed) the so-called "fault" provisions of the GA-catastrophic situation regulations (supra) in a manner that attempts to avoid the destitution of children.<sup>(4)</sup> However, even if that were the case here (i.e., if the petitioner's "control" over his present predicament could be overlooked), the regulations also provide that GA for "temporary housing" is available only when "alternative arrangements are not immediately available". W.A.M. § 2613.2.

In most cases it can be assumed that "temporary housing" in a motel is preferable for the welfare of children to their being forced to stay in a typical homeless shelter or crowded in with friends or relatives. It is not at all clear, however, that this is the case herein.

The alternative temporary housing situations proposed by the Department in this case (see supra) until October 1st appear no worse than placing the family in a motel room for that time. A potential advantage of the shelters proposed by the Department in this case is the availability of child care and family support services, as well as help in locating permanent housing. Unfortunately, based on the petitioner's representations and demeanor, it appears doubtful that he would ever admit his family's need for such services, or the competence of those agencies to help his family. But that, in and of itself, does not render those services inappropriate as "alternative arrangements" under the regulations.

Based on the petitioner's history and demeanor, the hearing officer is not at all convinced that the children in question will be better off if provided with "temporary housing" in the form of a motel room rather than the short-term (and free) alternative suggested by the Department. In fact, the opposite appears evident. Therefore, even if it could be found that the petitioner is facing a "catastrophic situation" as defined in § 2602(b), it cannot be concluded that the Department's decision in this matter that the petitioner has not availed himself of suitable "alternative arrangements" to temporary housing is either contrary to the regulations or unconscionable as a matter of policy. The Department's decision is, therefore, affirmed. 3 V.S.A. § 3091(d) and Fair Hearing Rule No. 19.

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1. See Procedures Manual § P-2610 D.
2. The petitioner does not maintain that it was necessary to pay his friend in order to keep his car.
3. It appears, however, that the petitioner routinely brings the child there for "respite" care, which involves overnight stays.
4. Unlike several years ago, when such cases were all-too-frequent, the board now sees surprisingly few appeals regarding the denial of EA/GA for emergency housing.